IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2123 OF 2007

1. Jayram Shankar Patil & 19 Others. .. Petitioners.

V/s.

1. The State of Maharashtra,
through the Ministry of Urban
Devp.,Mantralaya, Mumbai & Others .. Respondents.

Mr.V.A.Gangal with Mr.Sanjay Jain i/by Mr.Pravin Mehta & Mithi Co. for the for the Petitioners.

Mr.P.I.Khemani, AGP for the Respondents Nos. 1 to 3.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 24th APRIL, 2007.

P.C. :- (Per R.M.SAVANT,J.)

. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioners impugn the order dated 30th May, 2005 passed by the Additional Collector and Competent Authority i.e. the Respondent No.4 herein and the order dated 19th of January, 2006 passed by the Government of Maharashtra and the notification dated 29th December, 2005 issued under section 10(3) of the ULCR Act and the corrigendum by way of notification dated 22nd June, 2006 issued thereto.

2. The petitioners are the owners of the property

admeasuring 6,09,315.37 square metres situate at village Ambernath, Tal. Ulhasnagar, Dist. Thane. On coming into force of the Urban Land (Ceiling and Regulations) Act, 1976, hereinafter referred to as the said Act, the petitioners filed statement under section 6 (i) of the said Act and an area of 5,90,223.22/- square metres was declared as surplus vacant land pursuant to the order passed under section 8(iii) of the said Act. The petitioners by an agreement had agreed to sell their right title and interest in respect of the said land to M/s. Lok Holdings. It appears that by the agreement dated 31.11.1999, the said M/s. Lok Holdings transferred whatever interest it had in the said land in favour of the Petitioner No.19 i.e. Lok Housing and Construction Limited Company and irrevocable power of attorney was executed in favour of the petitioner No. 20 on 26.9.1990, as claimed by the petitioners.

3. The petitioner No. 19 applied for exemption of the said land declared as surplus under section 20 of the said Act. By an order dated 12.01.1995 the said exemption was granted under section 20 of the said Act in respect of the surplus vacant land. Some of the clauses of the said exemption order which are relevant for the purpose of this petition are reproduced herein under :

"2. The said persons shall make full utilisation of the land so exempted from the purpose afroresaid, by constructing on the said land tenements of upto 25 Sq.mtrs. of plinth area tenement upto 40 sq.mtrs., of plinth area, tenements upto 150 sq.mtrs. plinth area and tenements upto 80 sq.mtrs. plinth area as specified in the condition No.1 above.

"4. The said persons can commence the development of the land for construction of tenements of upto 25 sq.mtrs., upto 40 sq.mtrs. upto 50 sq.mtrs. 80 sq.mtrs., plinth area and land under first 4,000 sq.mtrs.,(called component C) with in a period of one and half years from the date of this exemption order and shall complete the same work within 8 years from the date of this exemption order failing which the exemption shall stand withdrawn. If only a part of the land is utilised by the said person and a part remains vacant at the end of above date, teh exemption for the part which remains vacant or where the buildings are incomplete for the land under such incomplete buildings and the land appurtenant thereto shall be deemed to have been withdrawn and vacant land and such land with structures and land appurtenant shall be acquired as per Chapter III of the Urban Land (Ceiling and Regulation) Act, 1976.

8. The landholder shall be required to surrender 10% of the floor space of the net permissible F.S.I. of the land exempted under this exemption order 10% of the permissible F.S.I. in the form of tenements with a plinth area of upto 25 sq.mtrs. , 40 sq.mtrs.,50 sq. mtrs. and 80 sq. mtrs. to the persons nominated by the State Government at predetermined rate as per prescribed in G.C.No. ULC-1090/(3844/D-XIII, dated 29th Dec. 1990.

15. If at any time, the State Government is satisfied that there is a breach of any other conditions mentioned in this order, it shall be competent for the State Government to withdraw by an order, the exemption order from the date specified in the order.

> . Provided that, before making any such order the State Government shall give reasonable opportunity to the person whose lands are exempted for making the representation against the proposed withdrawal."

4. Under the said exemption order, the petitioners were, therefore, to commence the construction within one and half years and thereafter to implement the scheme by 11.01.2003. The petitioners had in terms of the said order dated 12.01.1995 furnished an undertaking on 06.05.1993 as regards observations of the terms and conditions of the said order dated 12.01.1995. The petitioners were granted an extension on 11.02.2004 for a period of one year upto 11.02.2005. Thereafter, the progress report was sought from the petitioners which was submitted by the petitioners on 06.04.2005. The petitioners progress being not found to be satisfactory, a show cause notice came to be issued to the petitioners as to why the scheme sanctioned vide order dated 12.01.1995, should not be cancelled. The petitioners replied to the said show cause notice and contended that in view of the fact that the land was situated in a remote area and in view of the fact that there was recession in the real estate market between 1995 -2001, the petitioners were not in a position to implement the said scheme. The said reply of the petitioners was considered and after following due procedure, an order

came to be passed by the Additional Collector and Competent Authority on 30th May, 2005, cancelling the exemption order dated 12.01.1995. The said order, interalia, records that there was no progress in respect of the said scheme between the year 1995 to 2001 and inspite of the extension granted in the year 2004, through time had expired on 11.02.2003 no progress was shown by the petitioners. In the period of about 10 years, only 4 buildings were constructed by the petitioners. The Additional Collector and Competent Authority also observed that the petitioners had failed to surrender to the State Government about 449 flats which was the obligation of the petitioners under the said exemption order dated 12.01.1995.

5. The petitioners after the said cancellation made representation to the Additional Collector and Competent Authority and also the State Government. The said representation of the petitioners was considered by the State Government and vide order dated 19th January 2006, it rejected the said representation of the petitioners. Though the said order is purportedly passed under the provisions of the section 34 of the said Act, it is the case of the petitioners that they had not invoked the said provisions. The State Government while rejecting the said representation of the petitioners has,

interalia, recorded a breach of the terms and conditions of the order dated 12.01.2005. The State Government came to a conclusion that the reasons cited by the petitioners for non-implementation of the scheme in the period of 10 years could not be accepted.

6. The instant case, in our view, is a classic case of how an order of exemption granted under section 20 of the said Act, not complied with or flouted. The said exemption is granted so that the scheme which is implemented under the exemption enures to the benefit of the weaker section of the society. However, the instant case typifies the breach of the exemption order in all its respects. It is pertinent to note that under the said exemption order, the petitioners were to construct flats admeasuring 25 square metres, 40 square metres and 80 square metres, which could be allotted to the weaker section of the society. The petitioners were also to pay to the State Government 30% of the market value of the land for conversation from category ‘A’ to category ‘B’. The said amount with interest, is now accumulated to Rs. 44,07,715/-. It is also significant to note that the State Government has found that the petitioners have not even completed 25% of the construction. The petitioners were to construct a large number of buildings but have constructed only four. The

petitioners were also to surrender to the State Government 449 flats but have-not surrendered a single flat as of date. Therefore, there is a gross breach and violation of the said exemption order dated 12.01.1995 by the petitioners.

7. It is the contention of the petitioners that the State Government has passed an order under section 34 of the said Act without there being any application by the petitioners, invoking the said provisions. No doubt from the record, it appears that the petitioners have not invoked section 34 of the said Act against the order passed by the competent authority dated 30.05.2005 cancelling the exemption order granted in favour of the petitioners but the fact remains that the petitioners had made a representation to the State Government against the said order dated 30.05.2005 passed by the Additional Collector and Competent Authority therefore, the State Government had to consider the said representation and dispose it of. The petitoiners having invoked the jurisdiction of the State Government against the said order dated 30.05.2005 now cannot have a grievance about the same. In our view, therefore, the reference to section 34 of the U.L.C. Act in the order of the State Government is inconsequential and the petitioners, therefore, cannot derive any right on the

said basis. The petitioners also seek to challenge order passed by the competent authority dated 30.5.2005 contending that the power of cancellation is with the State Government and not with the competent authority. In the affidavit in reply filed on behalf of the State Government by one Ashok Ambadas Shingare, it has been stated that the power under section 20 has been delegated to the Additional Collector and Competent Authority by circulars issued in that behalf by the State Government. Since, the competent authority has been given the jurisdiction to take follow up action pursuant to the grant of exemption, the said affidavit goes on to state that the order passed by the competent authority cannot be faulted on the ground that it does not have jurisdiction. We, therefore, see no merit in the said contention of the petitioners.

8. Considering that the exemption granted to the petitioners on 12.01.1995, was on the basis of the terms and conditions some of which we have extracted earlier in this order, in our view, the Competent Authority and the State Government was within its rights in cancelling the exemption granted to the petitioners vide order dated 30.05.2005 and rejecting the representation of the petitioners by order dated 19th of January, 2006. We see no reason to interfere with the same in our extra

ordinary writ jurisdiction under Article 226 of the Constitution of India.

9. The petition is therefore, summarily dismissed.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)